# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1921

No. [redacted]168 [redacted]10

JOSEPH W. NICHOLAS, APPELLANT,

*vs.*

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JULY 18, 1918.

**(26,650)**

# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1915.

## No. 564.

(26,850)

# (26,650)

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1918.

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JOSEPH W. NICHOLAS, APPELLANT,

*vs.*

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DD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 10, 1919.

I. *Original Petition.*

Filed May 23, 1916.

In the Court of Claims.

No. 33263.

JOSEPH W. NICHOLAS

vs.

THE UNITED STATES.

*Petition.*

To the Chief Justice and Judges of the Court of Claims:

The claimant respectfully represents and shows:

I. Claimant is a citizen of the United States and a resident of the State of Maryland.

II. Claimant was appointed to the office of Inspector of Customs, in and for the Port of Baltimore, Maryland, on August 30th, 1900. After taking the oath of office for said office on said date, claimant was paid the compensation of Four ($4.00) dollars per diem for every day in the year. This appointment was made by the Secretary of the Treasury upon the nomination of the Collector of the Port of Baltimore.

III. Claimant continued under said appointment in said port at said compensation, to and including the 20th day of February, 1913. During the period between August 30th, 1900, and February 20th, 1913, both dates inclusive, claimant received the full compensation of Four ($4.00) dollars per diem for every day in the year. On said date of February 20th, 1913, claimant was summarily discharged from the service of the United States by the Collector of the Port of Baltimore, who acted pursuant to instructions issued by the Secretary of the Treasury. No charges of any nature whatsoever were preferred against claimant, and no reasons were given to claimant for his removal.

IV. Claimant avers that his summary removal from the service of the United States, as aforesaid, was unlawful, invalid and of no force and effect, because it was contrary to Section VI. of the Act of Congress, approved August 24, 1912 (37 Stat. 555).

V. On the said 20th day of February, 1913, when claimant was informed that his services had been terminated, he demanded to know the reasons therefor from his immediate superior. Claimant was advised by said superior that he did not know the reasons for his removal, except that it had been recommended by an investigating committee of special agents.

VI. Claimant was, by virtue of his appointment, an employee of the Civil Service of the United States, under the Act of Congress, January 16, 1883, known as the Civil Service Law.

3 VII. During all the time from the date of claimant's removal on February 20th, 1913, as heretofore alleged, claimant has stood ready, willing and able to perform the duties of the office to which he was legally appointed, and from which he was illegally separated. Claimant avers that he has been prevented from performing the duties of said office by direction of the Secretary of the Treasury or his subordinates.

VIII. Claimant avers that he was, and is entitled to the compensation of Four ($4.00) dollars per diem for each and every day from the 20th day of February, 1913, to and including the 20th day of May, 1916, eleven hundred eighty-five (1,185) days, amounting to Forty-seven Hundred Forty ($4,740.) dollars.

IX. Claimant is the sole owner of this claim, no other person or corporation is interested therein, and no assignment or transfer of the claim, or any part thereof, or interest therein, has been made.

X. Claimant is justly entitled to the amount herein named from the United States, as he is advised and believes, after allowing all just credits and set-offs.

Wherefore, he prays judgment against the United States for the sum of Forty-seven Hundred Forty ($4,740.) dollars.

SPOOR & RUSSELL,
*Attorneys of Record.*

DUDLEY & MICHENER,
*Of Counsel.*

4 STATE OF NEW YORK,
*County of New York, ss:*

Personally appeared before me, a notary public in and for the County of New York, William E. Russell, who being sworn according to law, deposes and says: That he is a member of the partnership of Spoor & Russell, which partnership has been duly authorized by power of attorney, to represent the claimant and verify pleadings in this case; that he has read and understands the foregoing petition, and that the matters and things therein stated are true in substance and in fact, as he is informed and believes.

WILLIAM E. RUSSELL.

Subscribed and sworn to before me this 22nd day of May, 1916.

[SEAL.] E. E. LEVINE,
*Notary Public, Kings Co.*

Cert. filed N. Y. Co. County Clerks' Nos. Kings Co. 77; N. Y. Co. 230. Registers' Nos. Kings Co. 8081; N. Y. Co. 8200.
Commission expires March 30, 1918.

II. *Claimant's Amendment to Petition.*

Filed, by Leave of Court, October 17, 1918.

To the Chief Justice and Judges of the Court of Claims:

The claimant respectfully amends the petition as follows:

Amended Paragraph VIII.

Claimant avers that he was and is entitled to the compensation of Four ($4) Dollars per diem for each and every day from the 20th day of February, 1913, to the day of rendering judgment in this case, the amount due to, and including the 30th day of September, 1917, being Six thousand seven hundred thirty-two ($6,732) Dollars.

Amended Conclusion of Law.

Wherefore, claimant prays judgment against the United
6 States for the sum of Six thousand seven hundred thirty-two ($6,732) Dollars, the amount due at this time, and for such additional amount as may be due at the date of rendering judgment herein.

SPOOR & RUSSELL,
*Attorneys of Record.*

DUDLEY & MICHENER,
*Of Counsel.*

STATE OF NEW YORK,
*County of New York, ss:*

Personally appeared before me, a notary public in and for the County of New York, William E. Russell, who being sworn according to law deposes and says that he is a member of the firm of Spoor & Russell, a partnership, which partnership has been duly authorized by power of attorney to represent the claimant and verify pleadings in this case; that he has read and understands the foregoing amendments of petition, and that the matters and things therein stated are true in substance and in fact, as he is informed and believes.

WILLIAM E. RUSSELL.

Subscribed and sworn to before me this 2nd day of October, 1917.
[SEAL.] GEORGE E. BROWN,
*Notary Public, Richmond County.*

Certificate filed in New York County No. 321. New York Register No. 9289.
Term expires March 30, 1919.

7 III. *General Traverse.*

Court of Claims.

No. 33263.

JOSEPH W. NICHOLAS
vs.
THE UNITED STATES.

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by Rule 34.

IV. *Argument and Submission of Case.*

On March 6, 1918, this case was argued and submitted on merits by Mr. W. E. Russell, for the claimant, and Mr. Harvey D. Jacob, for the defendants.

8 V. *Findings of Fact, Conclusion of Law, and Opinion of the Court by Hay, J., in which Downey, J., Barney, J., Booth, J., and Campbell, Ch. J., Concur.*

Entered May 13, 1918.

This case having been heard by the Court of Claims the court, upon the evidence makes the following

Findings of Fact.

I.

The plaintiff, Joseph W. Nicholas, is a citizen of the United States and a resident of the State of Maryland and was duly appointed an inspector of customs in the port of Baltimore on January 28, 1902, at a compensation of $4 per diem for every day in the year. He continued under the aforesaid appointment to and including February 20, 1913. On that day he was summarily discharged from the service of the United States by the collector of customs of the port of Baltimore pursuant to instructions issued by the Secretary of the Treasury.

At the time of his discharge from said service he was in the classified civil service of the United States. Before and at the time of his discharge aforesaid charges had been preferred against him by a committee appointed by the Secretary of the Treasury to examine into and report upon the conduct of the customs business at Baltimore. The said Joseph W. Nicholas had no notice of these charges and was not furnished with a copy thereof, nor was he allowed a reasonable time for personally answering the same in writing.

II.

There has been no evidence taken in this case to show either the willingness or the ability of the plaintiff to perform the duties of his office as inspector of customs from the date of his removal from the service on February 20, 1913. It does not appear that he made any report in person or in writing to the office of the collector of customs at Baltimore.

The plaintiff is the sole owner of this claim, and no assignment or transfer of the claim, or any part thereof or interest therein, has been made.

9 Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the petition herein should be, and the same is hereby, dismissed. Judgment is rendered in favor of the United States against the plaintiff for the cost of printing the record in this cause in the sum of nine dollars and ninety-eight cents ($9.98).

Opinion.

HAY, Judge, delivered the opinion of the court:

Both the plaintiff and defendants have discussed in their briefs the question of the legality of the removal from office of the plaintiff and the effect and meaning of section 6 of the act of August 24, 1912. We do not deem it necessary to pass upon those questions in view of the fact that the plaintiff has failed to show affirmatively his willingness and ability to discharge the duties of the office in question from the date of his removal therefrom down to the present time. If it should be held that the plaintiff was illegally removed from the office which he held, still in order that he may recover the salary which is alleged to be due him from the time of his alleged illegal removal therefrom to the present time it must appear affirmatively in the record that he was willing and able to discharge the duties of the office. There is no evidence in this record that such was the case. Indeed, there is no evidence of any kind of such willingness or ability. United States v. Wickersham, 201 U. S., 390, 399. Perkins v. United States, 20 Ct. Cls., 438, 441. Miller v. United States, 45 C. Cls., 509, 517.

The petition will therefore be dismissed, and it is so ordered.

Downey, Judge; Barney, Judge; Booth, Judge, and Campbell, Chief Justice, concur.

10 VI. *Judgment of the Court.*

At a Court of Claims held in the City of Washington on the Thirteenth day of May, A. D. 1918, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises find in favor of the defendants, and do order, adjudge, and decree that Joseph W. Nicholas, as aforesaid, is not entitled to recover and shall not recover any sum in this action of and from the defendants, the United

States; and that the petition be and it hereby is dismissed: And it is further ordered, adjudged, and decreed that the defendants, the United States, as aforesaid, shall have and recover of and from the claimant, Joseph W. Nicholas, as aforesaid, the sum of Nine dollars and ninety-eight cents ($9.98) the cost of printing the record in said cause in this court, to be collected by the Clerk, as provided by law.

By THE COURT.

VII. *Proceedings Had After Entry of Judgment.*

On June 11, 1918, the claimant filed a motion for new trial and to remand the case to the general docket for the taking of testimony. On June 17, 1918, this motion was overruled by the court.

VIII. *Claimant's Application for and Allowance of an Appeal.*

Comes now the claimant and makes application for an appeal to the Supreme Court of the United States.

SPOOR & RUSSELL,
*Attys. of Record.*

DUDLEY & MICHENER, *Counsel.*

Filed July 12, 1918.

Ordered: That the above appeal be allowed as prayed for.
July 16, 1918. EDWARD K. CAMPBELL,
*Chief Justice.*

11 Court of Claims.

No. 33263.

JOSEPH W. NICHOLAS
vs.
THE UNITED STATES.

I, Saml. A. Putman, Chief Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact, conclusion of law, and opinion of the court by Hay, J.; of the judgment of the court; of the application of the claimant for, and the allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this 16th day of July, A. D. 1918.

[Seal Court of Claims.]

SAML. A. PUTMAN,
*Chief Clerk Court of Claims.*

Endorsed on cover: File No. 26650. Court of Claims. Term No 564. Joseph W. Nicholas, appellant, vs. The United States. Filed July 18th, 1918. File No. 26650.

* * * * * * *

IV. *History of Proceedings.*

On March 6, 1918, the case was argued and submitted on merits by Mr. W. E. Russell, for the claimant, and Mr. Harvey D. Jacob, for the defendants.

On May 13, 1918, the court filed findings of fact, conclusion of law, and opinion by Hay, J., in which Downey, J., Barney, J., Booth, J., and Campbell, Ch. J., concurred, and entered a judgment against the claimant in the sum of $9.98 for the cost of printing the record.

On June 11, 1918, the claimant filed a motion for new trial and to remand the case to the general docket for the taking of testimony. On June 17, 1918, this motion was overruled by the court.

On July 12, 1918, the claimant filed an application for an appeal to the Supreme Court which application was allowed July 16, 1918.

Said record was filed in the Supreme Court July 18, 1918, and Docketed as 26,650, October Term, 1918, No. 564. (No. 168, October Term, 1919.)

V. *Order of Supreme Court on Motion to Remand to Court of Claims.*

Filed October 20, 1920.

On consideration of the motion to remand this cause to the Court of Claims for further findings of fact,

It is now here ordered by the court that the said motion be, and the same is hereby, granted, and the Court of Claims is directed to set aside its judgment and reopen the case for further testimony and to make additional findings of fact.

October 13, 1919.

VI. *Order of Court of Claims on Above Mandate.*

Entered October 27, 1919.

In obedience to the mandate of the Supreme Court in this cause it is ordered that the judgment heretofore rendered by this court be and the same is hereby set aside, and the cause is remanded to the General Docket with leave to both parties to take additional proof in accordance with the mandate of the Supreme Court.

BY THE COURT.

VII. *Argument and Submission of Case.*

On February 24, 1920, this case was argued on the order of remand of the Supreme Court by Mr. Louis T. Michener, for the claimant, and by Mr. Harvey D. Jacob, for the defendants, and submitted.

VIII. *History of Further Proceedings.*

On March 8, 1920, the court filed findings of fact and conclusion of law, and opinion, and entered judgment against claimant for printing and dismissed the petition.

On March 18, 1920, the claimant filed a motion to amend the findings.

On March 22, 1920, the court filed an order allowing in part and overruling in part claimant's motion to amend findings and filed amended finding V, and ordered that former judgment and opinion stand.

Said findings (as amended), conclusion of law and opinion are as follows:

IX. *Findings of Fact (as Amended), Conclusion of Law, Opinion of the Court by Hay, J., in which All the Judges Concur.*

Entered March 8, 1920.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

*Findings of Fact.*

I.

The plaintiff, Joseph W. Nicholas, is a citizen of the United States and a resident of the State of Maryland, and was duly appointed an inspector of customs in the port of Baltimore on January 28, 1902, at a compensation of $4 per diem for every day in the year.

II.

During the year 1911 the Secretary of the Treasury appointed a committee to examine into and report upon the conduct of the customs service at Baltimore. On August 24, 1911, the committee reported in part as follows: "J. W. Nicholas: This officer entered the customs service in 1899 as inspector. He has been suspended for drinking; is rated No. 2 by the surveyor for 'not giving proper supervision over his work,' and by Chief Inspector Hamlet this officer is charged with being at times indifferent, and again is excellent, and was suspended for intoxication. In view of this record and of personal observation we are of opinion that the service would be benefited by his removal and the place filled by a person competent to discharge all the duties of the position."

On February 5, 1913, the Secretary of the Treasury, Hon. Franklin MacVeigh, the appointing authority, approved the recommendation of the committee, and on February 19, 1913, wrote the collector of customs at Baltimore to remove the plaintiff from the service for the following reasons given in writing, namely, "on account of the

use of intoxicating liquors and the unsatisfactory and perfunctory manner in which he performs his work. The plaintiff was therefore on February 20, 1913, removed from the service. At the time of his dismissal from said service he was in the classified civil service of the United States. The plaintiff at the time of his dismissal from the service had no notice of any charges given him; nor was he given opportunity to reply to the same.

III.

Before the plaintiff was dismissed from the service Congress passed an act, to wit, the act of August 24, 1912, authorizing the President of the United States to reorganize the customs service of the United States, and providing further that the organization effected thereunder should be permanent until otherwise provided by Congress. This permanent organization was reported to Congress on March 3, 1913. Under this reorganization of the customs service there were provided for the district of Maryland (including the State of Maryland, the District of Columbia, and the county of Alexandria, Va.) 33 inspectors of customs. These offices are now filled and have been filled since March 3, 1913, by persons appointed by the Secretary of the Treasury.

IV.

The plaintiff made no appeal to the Secretary of the Treasury at the time of his removal from office, nor has he at any time since his removal made such an appeal.

V.

The plaintiff was willing and physically able to resume the duties of his office and capable of discharging the same. He did not apply for reinstatement therein at any time or notify the Secretary of the Treasury of his desire therefor or for a revocation of the order of dismissal.

VI.

If the plaintiff is entitled to recover he is entitled to receive $4 per diem for each and every day from February 20, 1913, to and including the 8th day of March, 1920, which per diem amounts to the sum of $10,332.

*Conclusion of Law.*

Upon the foregoing findings of fact, the court decides as a conclusion of law, that the plaintiff is not entitled to recover. It is therefore adjudged and ordered that the petition of the plaintiff be, and the same is hereby dismissed. Judgment is rendered against the plaintiff in favor of the United States for the cost of printing the record in this cause, the amount thereof to be entered by the clerk and collected by him in the manner prescribed by law.

*Opinion.*

HAY, *Judge*, delivered the opinion of the court:

The plaintiff was an inspector of customs at the port of Baltimore, receiving $4.00 per diem. During the year 1911 the Secretary of the Treasury appointed a committee to examine into and report upon the conduct of the customs service at the port of Baltimore. On August 24, 1911, that committee reported to the Secretary, among other things, that the plaintiff should be dismissed from the service, whereupon the Secretary of the Treasury on February 19, 1913, directed in writing the collector of customs at Baltimore to remove the plaintiff from the service "on account of the use of intoxicating liquors and the unsatisfactory and perfunctory manner in which he performs his work." In pursuance of this order the plaintiff was removed from the service on February 20, 1913. At the time of the plaintiff's removal from the service he was in the classified civil service of the United States, and received no notice of the charges upon which he was removed, nor was he given an opportunity to reply to the charges. Since the date of the plaintiff's removal he asserts that he has been ready, able, and willing to perform the duties of the office of inspector of customs; and if he is entitled to recover in this suit, the amount of salary from the date of his dismissal to the date of the judgment in this case is $10,332. The plaintiff made no appeal to the Secretary of the Treasury at the time of his removal from office, nor has he at any time since his removal made such appeal. Before the plaintiff was removed from the office Congress passed an act authorizing the President to reorganize the customs service of the United States and providing that the organization effected thereunder should be permanent until otherwise provided by Congress. 37 Stat. 434. This permanent organization was reported to Congress on March 3, 1913, and there were provided for the district of Maryland, in which the port of Baltimore is included, 33 inspectors of customs. These 33 offices were filled by appointment of the Secretary of the Treasury of persons who, or their successors, are now filling these offices, so that since the third day of March, 1913, there has been no office to which the plaintiff could have been appointed. The plaintiff filed his petition in this court on May 23, 1916, more than three years after he had been removed from the office, the salary of which he is now asking shall be paid him from the date of his removal down to this date, and, of course, if he is paid as he sets out he is entitled to be paid it will follow that he must be paid for the rest of his natural life.

The plaintiff asserts that he has been illegally dismissed from the office of inspector of customs; that he was, when dismissed, in the classified civil service of the United States; and that owing to his readiness, willingness, and ability to discharge the duties of the office he is entitled to its emoluments, notwithstanding the fact that he has rendered no service to the Government of the United States since

his removal from the office. He bases his claim upon the following provisions of the act approved August 24, 1912, 37 Stat., 555, sec. 6. "That no person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service and for reasons given in writing, and the person whose removal is sought shall have notice of the same and of any charges preferred against him, and be furnished with a copy thereof, and also be allowed a reasonable time for personally answering the same in writing, and affidavits in support thereof; but no examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer making the removal; and copies of charges, notice of hearing, answer, reasons for removal; and the order of removal shall be made a part of the records of the proper department or office, as shall also the reasons for the reduction in rank or compensation; and copies of the same shall be furnished to the person affected upon request, and the Civil Service Commission also shall, upon request, be furnished copies of the same":

The provisions of the above statute do not deny the right of the Secretary of the Treasury to remove from office an officer whom he has appointed. The plaintiff was appointed to the office which he held by the Secretary of the Treasury whom Congress had clothed with the power to make such appointment. Having the power to appoint the Secretary of the Treasury had also, as incident to it, the power to remove. The provisions of the act above quoted give to the appointing power directions which must be followed when the removal of a person in the classified civil service of the United States is sought. A duty is imposed upon the officer, but if he ignores it and removes a person from office, his action does not thereby create an obligation upon the Government to pay a salary to a person so removed for an indefinite time. In other words, the Government is not responsible for the illegal orders of surbordinate officers. The Government can not be required by the action of its officers to pay salaries to persons for the rest of their natural lives who, since their removal from office, have done nothing to earn them.

If an illegal order dismissing a person from office is issued, the person so dismissed can not, without some action on his part, expect to continue to receive the compensation of the office. Some obligations rest upon him. It became his duty at once, or at least with reasonable diligence, to appeal to the officer having authority to revoke or to modify or to correct the illegal order. If he obeys the order and submits without appeal and without objection for an unreasonable time he must be held to have abandoned all title and claim to the office and its emoluments. Ide v. United States, 25 C. Cls., 401-407.

In this case the plaintiff was dismissed from the office which he held by the Secretary of the Treasury. Whether rightfully or wrongfully dismissed, he took no steps to have the order dismissing him revoked; he did not appeal to the Secretary of the Treasury. He did not request that the charges upon which he was removed should be communicated to him. He never has since his removal made any attempt to have the order of removal revoked, or to appeal to the Secretary of the Treasury, but has contented himself with

bringing a suit in this court to recover the salary of an office from which he has been dismissed, and the duties of which he has not performed. He did not take this step until more than three years had passed after his removal.

His remedy under the statute is perfectly obvious; he could have appealed to the Secretary of the Treasury to furnish him with the charges upon which the Secretary had acted and for a reasonable time to answer the same and to file affidavits supporting his answer, and then the Secretary could in his discretion have examined the witnesses, and have tried the case. If the Secretary did not choose to do this, the case would have been closed, and the order removing the plaintiff would have stood. The purpose of the statute was to give to persons in the classified civil service of the United States, before their removal therefrom, the right to see the charges upon which their removal was based, together with the privilege of answering the same in writing, and of having a trial if in the discretion of the appointing power he chose to grant one. The statute does not, and cannot, be held to contemplate that if the Secretary of the Treasury, as in this case, failed to carry out the provisions of the statute an obligation was thereby created against the Government to pay the salary of a person so removed after his removal and for an indefinite time thereafter.

This court can not try an action which has for its purpose the reinstatement of the plaintiff to the office from which he has been removed. And the fact remains that the plaintiff was dismissed from the office; that he is out of the service, and some other person was required to perform the duties of the office from which he has been dismissed. We are now asked to enter a judgment against the Government in favor of the plaintiff for the salary of an office from which he has been dismissed, and the duties of which he has not performed for seven years, when he has made no effort to have the order removing him revoked and has made no appeal to the Secretary of the Treasury to be reinstated. It must be held that he has submitted to the order of removal without appeal and without objection for an unreasonable length of time, that he has not used due diligence in asserting his rights, and that he has thereby abandoned all title and claim to the emoluments of the office. We, therefore, decide that the plaintiff, whether rightfully or wrongfully dismissed from the office, is not entitled after his dismissal and in the absence of any appeal or objection on his part within a reasonable length of time to recover some $10,000 salary, for seven years and more, of an office the duties of which he never performed during that period, and which were performed by some other person duly appointed to the office. Ide v. United States, supra. See U. S. ex rel. Arant vs. Lane, Secretary of Int., 249 U. S., 367.

Graham, Judge; Downey, Judge; Booth, Judge, and Campbell, Chief Justice, concur.

X. *Judgment of the Court.*

At a Court of Claims held in the City of Washington on the 8th day of March, A. D. 1920, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the defendants and do order, adjudge and decree that Joseph W. Nicholas is not entitled to recover any sum in this action of and from the United States; and that the petition herein be and it hereby is dismissed: And it is further ordered, adjudged and decreed that the United States have and recover of and from Joseph W. Nicholas the sum of Nine Dollars and ninety-eight cents ($9.98), the cost of printing the record in this case in this court, to be collected by the Clerk, as provided by law.

BY THE COURT.

XI. *Claimant's Application for and Allowance of an Appeal.*

Comes now the claimant and makes application for an appeal to the Supreme Court of the United States.

SPOOR & RUSSELL,
*Attys. of Record.*

DUDLEY & MICHENER,
*Counsel.*

Filed April 5, 1920.

Ordered: That the above appeal be allowed as prayed for.

April 5, 1920.

BY THE COURT.

Court of Claims.

No. 33263.

JOSEPH W. NICHOLAS

vs.

THE UNITED STATES.

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact, conclusion of law, and opinion of the court by Hay, J., of the judgment of the court; of the application of the claimant for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this 6" day of April, A. D. 1920.

[Seal Court of Claims.]

F. C. KLEINSCHMIDT,
*Assistant Clerk Court of Claims.*

[Endorsed:] File No. 26,650. Supreme Court U. S., October Term, 1919. Term No. 168. Joseph W. Nicholas, Appellant, vs. The United States. Transcript of record returned pursuant to order on motion to remand for additional findings. Filed April 7, 1920.